

AMENDMENTS TO LB 880

Introduced by Judiciary.

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 28-1213, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-1213 For purposes of sections 28-1213 to 28-1239,
6 unless the context otherwise requires:

7 (1) Person means any individual, corporation, company,
8 association, firm, partnership, limited liability company, society,
9 or joint-stock company;

10 (2) Business enterprise means any corporation,
11 partnership, limited liability company, company, or joint-stock
12 company;

13 (3) Explosive materials means explosives, blasting
14 agents, and detonators;

15 (4) Explosives means any chemical compound, mixture, or
16 device, the primary or common purpose of which is to function by
17 explosion, including, but not limited to, dynamite and other high
18 explosives, black powder, pellet powder, initiating explosives,
19 detonators, safety fuses, squibs, detonating cord, ignited cord,
20 igniters, display fireworks as defined in section 28-1241, and
21 firecrackers or devices containing more than one hundred thirty
22 milligrams of explosive composition, but does not include ~~common~~
23 consumer fireworks as defined in such section, gasoline, kerosene,

1 naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed
2 ammunition and primers for small arms, safety fuses, or matches;

3 (5) Blasting agent means any material or mixture,
4 intended for blasting which meets the requirements of 49 C.F.R.
5 part 173, subpart C, Definitions, Classification and Packaging for
6 Class I, as such subpart existed on ~~March 7, 2006~~, January 1, 2010;

7 (6) Detonator means any device containing an initiating
8 or primary explosive that is used for initiating detonation.
9 Excluding ignition or delay charges, a detonator shall not contain
10 more than ten grams of explosive material per unit. Detonator
11 includes an electric detonator of instantaneous or delay type,
12 a detonator for use with safety fuses, a detonating cord delay
13 connector, and a nonelectric detonator of instantaneous or delay
14 type which consists of detonating cord, shock tube, or any other
15 replacement for electric leg wires;

16 (7)(a) Destructive devices means:

17 (i) Any explosive, incendiary, chemical or biological
18 poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a
19 propellant charge of more than four ounces, (D) missile having an
20 explosive or incendiary charge of more than one-quarter ounce, (E)
21 mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I)
22 vessel or container intentionally caused to rupture or mechanically
23 explode by expanding pressure from any gas, acid, dry ice, or other
24 chemical mixture, or (J) any similar device, the primary or common
25 purpose of which is to explode and to be used as a weapon against
26 any person or property; or

27 (ii) Any combination of parts either designed or intended

1 for use in converting any device into a destructive device as
2 defined in subdivision (7)(a)(i) of this section from which a
3 destructive device may be readily assembled.

4 (b) The term destructive device does not include (i) any
5 device which is neither designed nor redesigned for use as a weapon
6 to be used against person or property, (ii) any device, although
7 originally designed for use as a weapon, which is redesigned for
8 use as a signaling, pyrotechnic, line-throwing, safety, or similar
9 device, (iii) surplus ordnance sold, loaned, or given by the
10 Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686,
11 as such sections existed on March 7, 2006, (iv) any other device
12 which the Nebraska State Patrol finds is not likely to be used
13 as a weapon or is an antique, or (v) any other device possessed
14 under circumstances negating an intent that the device be used as a
15 weapon against any person or property;

16 (8) Federal permittee means any lawful user of explosive
17 materials who has obtained a federal user permit under 18 U.S.C.
18 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,
19 2010;

20 (9) Federal licensee means any importer, manufacturer,
21 or dealer in explosive materials who has obtained a federal
22 importers', manufacturers', or dealers' license under 18 U.S.C.
23 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,
24 2010; and

25 (10) Smokeless propellants means solid propellants
26 commonly called smokeless powders in the trade and used in small
27 arms ammunition.

1 Sec. 2. Section 28-1239.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1239.01 (1) No person shall conduct a public
4 exhibition or display of display fireworks without first procuring
5 a display permit from the State Fire Marshal. If the applicant is
6 an individual, the application for a display permit shall include
7 the applicant's social security number. Such application for a
8 display permit shall be accompanied by a fee of ten dollars to be
9 deposited in the State Fire Marshal Cash Fund.

10 (2) No display fireworks shall be sold or delivered by
11 a licensed distributor to any person who is not in possession of
12 an approved display permit. Sales of display fireworks to persons
13 without an approved display permit shall be subject to sections
14 28-1213 to 28-1239.

15 Sec. 3. Section 28-1241, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 28-1241 As used in sections 28-1239.01 and 28-1241 to
18 28-1252 and section 4 of this act, unless the context otherwise
19 requires:

20 (1) Distributor means any person engaged in the business
21 of making sales of fireworks at wholesale in this state to any
22 person engaged in the business of making sales of fireworks either
23 as a jobber or as a retailer or both;

24 (2) Jobber means any person engaged in the business of
25 making sales of fireworks at wholesale to any other person engaged
26 in the business of making sales at retail;

27 (3) Retailer means any person engaged in the business of

1 making sales of fireworks at retail to consumers or to persons
2 other than distributors or jobbers;

3 (4) Sale includes barter, exchange, or gift or offer
4 therefor and each such transaction made by any person, whether as
5 principal, proprietor, agent, servant, or employee;

6 (5) Fireworks means any composition or device designed
7 for the purpose of producing a visible or audible effect by
8 combustion, deflagration, or detonation and which meets the
9 definition of ~~common~~ consumer or special fireworks set forth by the
10 United States Department of Transportation in Title 49 of the Code
11 of Federal Regulations;

12 ~~(6) Common fireworks means any small firework device~~
13 ~~designed to produce visible effects by combustion and which is~~
14 ~~required to comply with the construction, chemical composition,~~
15 ~~and labeling regulations of the United States Consumer Product~~
16 ~~Safety Commission set forth in 16 C.F.R., small devices designed to~~
17 ~~produce audible effects such as whistling devices, ground devices~~
18 ~~containing fifty milligrams or less of explosive composition,~~
19 ~~and aerial devices and firecrackers containing one hundred thirty~~
20 ~~milligrams or less of explosive composition. Class C explosives as~~
21 ~~classified by the United States Department of Transportation shall~~
22 ~~be considered common fireworks;~~

23 ~~(7) Permissible (6)(a) Consumer fireworks means only~~
24 ~~sparklers, vesuvius fountains, spray fountains, torches, color fire~~
25 ~~cones, star and comet type color aerial shells without explosive~~
26 ~~charge for the purpose of making a noise, lady fingers, not to~~
27 ~~exceed seven-eighths of an inch in length or one-eighth inch~~

1 ~~in diameter,~~ ~~total explosive composition not to exceed fifty~~
2 ~~milligrams in weight,~~ ~~color wheels,~~ ~~and any other fireworks~~
3 ~~approved under section 28-1247,~~ ~~and any of the following devices~~
4 ~~that (i) meet the requirements set forth in 16 C.F.R. parts 1500~~
5 ~~and 1507, as such regulations existed on January 1, 2010, and (ii)~~
6 ~~are tested and approved by a nationally recognized testing facility~~
7 ~~or by the State Fire Marshal:~~

8 (A) Any small firework device designed to produce visible
9 effects by combustion and which is required to comply with the
10 construction, chemical composition, and labeling regulations of the
11 United States Consumer Product Safety Commission set forth in 16
12 C.F.R., as such regulations existed on January 1, 2010;

13 (B) Any small device designed to produce audible effects
14 such as a whistling device;

15 (C) Any ground device or firecracker containing fifty
16 milligrams or less of explosive composition; or

17 (D) Any aerial device containing one hundred thirty
18 milligrams or less of explosive composition.

19 (b) Class C explosives as classified by the United
20 States Department of Transportation shall be considered consumer
21 fireworks.

22 (c) Consumer fireworks does not include:

23 (i) Rockets that are mounted on a stick or wire and
24 project into the air when ignited, with or without report;

25 (ii) Wire sparklers, except that silver and gold
26 sparklers are deemed to be consumer fireworks until January 1,
27 2014;

1 (iii) Night time parachutes;

2 (iv) Fireworks that are shot into the air and after
3 coming to the ground cause automatic ignition due to sufficient
4 temperature;

5 (v) Firecrackers that contain more than fifty milligrams
6 of explosive composition; and

7 (vi) Fireworks that have been tested by the State Fire
8 Marshal as a response to complaints and have been deemed to be
9 unsafe; and

10 ~~(8)~~ (7) Display fireworks means those materials
11 manufactured exclusively for use in public exhibitions or displays
12 of fireworks designed to produce visible or audible effects
13 by combustion, deflagration, or detonation. Display fireworks
14 includes, but is not limited to, firecrackers containing more
15 than one hundred thirty milligrams of explosive composition,
16 aerial shells containing more than forty grams of explosive
17 composition, and other display pieces which exceed the limits for
18 classification as ~~common~~ consumer fireworks. Class B, also known
19 as 1.3G, explosives as classified by the United States Department
20 of Transportation, 49 C.F.R. 172.101, as such regulation existed
21 on January 1, 2010, shall be considered display fireworks. Display
22 fireworks shall be considered an explosive as defined in section
23 28-1213 and shall be subject to sections 28-1213 to 28-1239, except
24 that display fireworks may be purchased, received, and discharged
25 by the holder of an approved display permit issued pursuant to
26 section 28-1239.01.

27 Sec. 4. (1) In the event the State Fire Marshal deems

1 any fireworks to be unsafe pursuant to subdivision (6)(c)(vi) of
2 section 28-1241, such fireworks item shall be quarantined from
3 other fireworks. Any licensed distributor, jobber, or retailer may
4 request, at the distributor's, jobber's, or retailer's expense,
5 that such fireworks item be tested by an independent, nationally
6 recognized testing facility to determine if such fireworks item
7 meets the requirements set forth by the United States Consumer
8 Product Safety Commission for consumer fireworks, also known as
9 1.4G explosives as classified by the United States Department of
10 Transportation, 49 C.F.R. 172.101, as such regulation existed on
11 January 1, 2010. A copy of the results of all testing done pursuant
12 to this section shall be provided to the State Fire Marshal.

13 (2) In the event such fireworks item is in compliance
14 with such requirements and otherwise permitted under section
15 28-1241, such fireworks item that was determined to be unsafe
16 shall be deemed a consumer firework and be permitted for retail
17 sale or distribution.

18 (3) In the event such fireworks item is in compliance
19 with such requirements but is otherwise not consumer fireworks,
20 such fireworks item shall not be sold at retail or distributed to
21 retailers for sale in this state, but a distributor, jobber, or
22 retailer may sell such fireworks item to another distributor or
23 retailer in a state that permits the sale of such fireworks item.

24 (4) In the event that such fireworks item is not in
25 compliance with such requirements, then the distributor, jobber, or
26 retailer shall destroy such fireworks item under the supervision
27 of the State Fire Marshal. If such fireworks item is not destroyed

1 under the supervision of the State Fire Marshal, notarized
2 documentation shall be provided to the State Fire Marshal detailing
3 and confirming the fireworks item's destruction.

4 Sec. 5. Section 28-1244, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1244 Except as provided in section 28-1245, it shall
7 be unlawful for any person to possess, sell, offer for sale, bring
8 into this state, or discharge any fireworks other than ~~permissible~~
9 consumer fireworks.

10 Sec. 6. Section 28-1246, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-1246 (1) It shall be unlawful for any person to
13 sell, hold for sale, or offer for sale as a distributor, jobber,
14 or retailer any fireworks in this state unless such person has
15 first obtained a license as a distributor, jobber, or retailer.
16 Application for each such license shall be made to the State
17 Fire Marshal on forms prescribed by him or her. If the applicant
18 is an individual, each application shall include the applicant's
19 social security number. Each application shall be accompanied by
20 the required fee, which shall be five hundred dollars for a
21 distributor's license, two hundred dollars for a jobber's license,
22 and twenty-five dollars for a retailer's license. ~~Each application~~
23 ~~for a license as a retailer postmarked after June 10 shall be~~
24 ~~accompanied by an additional fee of fifty dollars. All licenses~~
25 Each application for a retailer's license shall be received by the
26 State Fire Marshal at least ten business days prior to the sales
27 period, as set forth in section 28-1249, in which the retailer

1 wishes to sell consumer fireworks. A retailer's license shall be
2 good only for the specific sales period listed on the application
3 and within the calendar year in which issued. The retailer's
4 license and shall at all times be displayed at the place of
5 business of the holder thereof.

6 (2) The funds received pursuant to this section shall
7 be remitted to the State Treasurer for credit to the State Fire
8 Marshal Cash Fund.

9 Sec. 7. Section 28-1248, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1248 (1) It shall be unlawful for any person not
12 licensed as a distributor or as a jobber under the provisions of
13 sections 28-1241 to 28-1252 and section 4 of this act to bring any
14 fireworks into this state.

15 (2) It shall be unlawful for any retailer or jobber in
16 this state to sell any fireworks in this state which have not
17 been purchased from a distributor licensed under the provisions of
18 sections 28-1241 to 28-1252 and section 4 of this act.

19 (3) Any person licensed under the provisions of sections
20 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act shall
21 keep, available for inspection by the State Fire Marshal or his
22 or her agents, a copy of each invoice packing list for fireworks
23 purchased as long as any fireworks included on such invoice packing
24 list are held in his or her possession which invoice packing list
25 shall show the license number of the distributor or jobber from
26 which the purchase was made.

27 Sec. 8. Section 28-1249, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 28-1249 It shall be unlawful to sell any ~~permissible~~
3 consumer fireworks at retail within this state, outside the limits
4 of any incorporated city or village. ~~Permissible~~ Consumer fireworks
5 may be sold at retail only between June 24 and July 5 and between
6 December 28 and January 1 of each year.

7 Sec. 9. Section 28-1250, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 28-1250 (1) Any person who violates any of the provisions
10 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If
11 such person is a licensed distributor or jobber ~~he or she shall~~
12 ~~be subject to the revocation of his or her license for a period~~
13 ~~of one year.~~ the State Fire Marshal may suspend, cancel, or revoke
14 the license for up to three years. The suspension, cancellation,
15 or revocation shall become effective upon the failure to timely
16 appeal the decision under the Administrative Procedure Act or upon
17 an order of the Nebraska Fire Safety Appeals Board upholding the
18 decision pursuant to a hearing under the Administrative Procedure
19 Act.

20 (2) It shall be unlawful for any person, association,
21 partnership, limited liability company, or corporation to have in
22 his, her, or its possession any fireworks in violation of any of
23 the provisions of such sections. If any person shall have in his,
24 her, or its possession any fireworks in violation of such sections,
25 a warrant may be issued for the seizure of such fireworks and when
26 the warrant is executed by the seizure of such fireworks, such
27 fireworks shall be safely kept by the magistrate to be used as

1 evidence. Upon conviction of the offender, the fireworks shall be
2 destroyed, but if the offender is discharged, the fireworks shall
3 be returned to the person in whose possession they were found.
4 Nothing in such sections shall apply to the transportation of
5 fireworks by regulated carriers.

6 Sec. 10. Section 28-1252, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-1252 The State Fire Marshal shall adopt and promulgate
9 reasonable rules and regulations for the enforcement of sections
10 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and,
11 together with all peace officers of the state and its political
12 subdivisions, shall be charged with the enforcement of sections
13 28-1239.01 and 28-1244 to ~~28-1249~~, 28-1252 and section 4 of this
14 act.

15 Sec. 11. This act becomes operative on October 1, 2010.

16 Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241,
17 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue
18 Revised Statutes of Nebraska, are repealed.

19 Sec. 13. The following section is outright repealed:
20 Section 28-1247, Reissue Revised Statutes of Nebraska.